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4 UNITED STATES BANKRUPTCY COURT
5 NORTHERN DISTRICT OF CALIFORNIA

6 In re

7 DEPAK and KUSUM STOKES,

No. 99-12603

8 Debtor(s).
9 _____/

10 Memorandum re Administrative Expense Claim of Debtors
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12 The court has denied the discharge of debtors Depak and Kusum Stokes, who are medical
13 doctors. After their discharge was denied, they filed an administrative expense claim for \$31,124.70 on
14 account of mortgage payments they made on estate property while the case was in Chapter 11 and after
conversion to Chapter 7.

15 The court is unaccustomed to awarding anything to any debtors until their creditors have been
16 paid in full, let alone to debtors who have been so dishonest as to be denied a discharge. Nonetheless, it
17 does appear that debtors may be allowed an administrative expense claim where they have made
18 mortgage payments from non-estate funds which benefitted the bankruptcy estate. *In re Viet Vu*, 245
19 B.R. 644, 649 (9th Cir. BAP 2000); *In re Prospero*, 107 B.R. 732, 735-36 (Bkrtcy.C.D.Cal.1989).

20 However, in order to be entitled to allowance of such a claim the debtors must document the
21 payments they made with particularity, prove that the payments benefitted the estate, establish that the
22 payments were not made with estate assets, and show that they did not derive any personal benefit of
23 value for the payments which should be set off against the claim. *In re Viet Vu*, at 649.

24 In this case, the claim filed by the debtors has no backup whatsoever. It does not identify any
25 individual payments or list dates, amounts, or the source of payments. In addition, the debtors seem to
26 assume that any wages they received while the case was in Chapter 11 were not property of the estate,

1 which is an unwarranted assumption. If those wages were in any way earned through the use of estate
2 assets, then they were estate property. *Cusano v. Klein*, 264 F.3d 936, 945 (9th Cir. 2001); *In re*
3 *FitzSimmons*, 725 F.2d 1208, 1210 (9th Cir.1984) [To the extent that earnings are attributable not to a
4 debtor's independent personal services but to his business' invested capital, accounts receivable, good
5 will, employment contracts with the firm's staff, client relationships, fee agreements, or the like, the
6 earnings accrue to the estate.]. If the wages belonged to the estate, the debtors are not entitled to recover
7 payments made from them as an administrative expense.

8 For the foregoing reasons, the debtors' motion for allowance of their administrative expense
9 claim will be denied, without prejudice to an amended claim meeting the requirements noted in this
10 memorandum. Counsel for the trustee shall submit an appropriate form of order.

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13 Dated: February 5, 2003

14 Alan Jaroslovsky
15 U.S. Bankruptcy Judge
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